RESPONSE TO THE PROPOSED LEGISLATION REGARDING CONSCIENTIOUS OBJECTORS AS GIVEN AT A BRIEFING OF THE CHURCHES BY THE SADF ON 5 JANUARY 1983

Introduction

1. As the United Congregational Church of Southern Africa and the Presbyterian Church of Southern Africa have a joint Church and Society/Nation Committee, their delegates to the briefing on 5 January 1983 have decided to make a joint response to the briefing. We must stress that this response cannot claim to represent the official view of these denominations but only the views of these delegates.

2. The Presbyterian Church especially has done its best to co-operate with the process initiated by the Naude Committee. In addition to consulting with the Committee when requested we have supplied additional material such as the survey mentioned in paragraph 37(c) below. We have also advised our members of the possibility of deferment mentioned by the Minister of Defence which would enable conscientious objectors to take advantage of new legislation. We did this hoping that the new legislation would provide a reasonable alternative for them.

3. We appreciate the work put in by the Naude Committee, but we note that it refused to discuss with us the basis of its composition, when it met Presbyterian representatives in August 1981. It worried us that the Committee comprised three SADF chaplains all members of the NGK and one other person, a law officer, which to our minds meant an unavoidable bias. The NGK has in our opinion no experience as to what motivates conscientious objectors, and we found then that the members of the Committee tended to interpret these motives in a prejudiced manner. The NGK also has little experience of its own as to the enlightenment of conscience regarding South Africa's social and political issues that comes to young white people through contact within the Church with young black people.

4. We wish to express profound dissatisfaction with the briefing on 5 January. The meeting was called during the holiday period, it was extremely hurried, a short time limit was set to questions and many that we wished to ask were left unanswered. (See Appendix A.) No text of the proposals we were supposed to consider was issued, and we have had to rely on hurriedly taken notes. No discussion with those who framed the proposals was allowed at the meeting, and the whole approach of the SADF representatives was condescending and paternalistic.

5. The Naude Committee was appointed in August 1980 and advised then of those Churches which had requested interviews with the Minister of Defence on the conscientious objection issue. A year later it met with the Presbyterian Church. It has since had a great deal of time to formulate its proposals. In spite of this it has now provided only a brief meeting at the last minute to "inform" the Churches, alleging the need to have these proposals ready for the coming session of Parliament. Brig. Naude attributed the origin of his Committee to the desire to give attention to the requests of the "English language" Churches on conscientious objection, but the meeting on 5 January gave the impression that these Churches are in fact not being taken seriously. In contrast, Maj. Gen. van Zyl stated, the Committee had consulted with the Jehovah's Witnesses at length.

6. As responses to the proposals were asked for within one week, it is not possible for us to obtain authoritative answers from our Churches. Nevertheless our response is partly based on resolutions taken by both our Churches which involve basically the same proposals as those submitted under SACC auspices to the Naude Committee via the office of the Prime Minister in November 1980. (See Appendix B.) The General Assemblies of both our Churches have endorsed these proposals.

Acceptable Aspects of the Naude Proposals

7. We wish first to list those principles in the proposals that we welcome. These are:
   (a) that recognition of conscientious objectors is to be based on what the individual believes rather than on the tenets of the religious body to which he belongs;
   (b) that alternative service outside the SADF, for which both our Churches have asked since at least 1971, is envisaged; and
   (c) that allocation of such service is to be by a Government Department other than the Department of Defence.

Unacceptable Aspects of the Naude Proposals

8. On the basis of resolutions previously taken by our Churches we are compelled to reject many of the Naude proposals as quite unsatisfactory. The most fundamental of these are, in brief:
   (a) that recognition is limited to religious persons;
   (b) that the proposals appear not to cater at all for those who object on the basis of the just war doctrine;
   (c) the composition of the Board;
   (d) the proposal that the Board meet in camera;
   (e) the length of alternative (substitute) service proposed;
   (f) the extreme penalties proposed.

We comment in more detail below.

9. The proposals discriminate between religious and other conscientious objectors, making room only for religious objectors. This separates religion from other aspects of life in an unbiblical manner quite unacceptable to our Churches. It demotes to an inferior category and arbitrarily and unfairly discriminates against any persons who object on the basis of the just war position, on an ethical-political basis, or on the basis of a world view that rejects violence. The Naude Committee, perhaps unconsciously, also takes a blatantly political stance in favour of conscription and penalties for failure to comply. While rejecting any refusal on political grounds to participate in the SADF, it falsely assumes that participation is non-political.

10. When questioned about non-religious objectors, Brig. Naude replied that as the request for an adequate provision for conscientious objectors had come from the Churches, his Committee had assumed that the request was concerned only with religious persons. He said that the Churches had never asked for other objectors to be considered. This is <u>not</u> true. Appendix C lists resolutions taken by our two Churches and others as far back as 1971 which were referred to the Minister of Defence and which clearly state that religious and other moral or ethical grounds of conscience should be provided for. Appendix C also includes resolutions of the Christian Council of South Africa (now the SACC) dated 1963 which speak of "grounds of conscience and conviction" and "moral and religious considerations". This is reiterated in the SACC proposals of November 1980 (Introduction, par. 1 and 3, and Sec.I par.4) which were in the hands of the Naude Committee near the beginning of its work. The Naude Committee has therefore proceeded on a false assumption, and Brig. Naude's reply misled the gathering on 5 January on this matter.

11. The fundamental perspective of the proposals needs to be changed by returning to the generally accepted category of "conscientious objector". We urge that the definition of this supplied by the Presbyterian Church of Southern Africa in 1981 be adopted (Appendix D). Brig. Naude stated that "political, radical, psychological (did he mean philosophical?) or selfish reasons for objection" could not be accepted and appealed to the fact that only Denmark allows "political objectors". If the PCSA definition is studied, however, it will be seen that it does not speak of "political objectors", far less of "selfish" ones. It speaks of "reasons based on religious, moral, ethical or philosophical beliefs which are the prime motivating factor in the life of the person concerned and relate to what that person believes to be right and obligatory as distinct from what he believes to be expedient or pragmatic". It says that <u>these</u> reasons should be acceptable when they are the basis for objecting to "the actual taking of human life...for the particular national, social or

political purpose for which he (the objector) genuinely believes the war to be waged for which he is conscripted". This is not the same as a purely "political" objection, which may be merely pragmatic or expedient.

12. The Churches cannot accept a law that provides solely for religious persons while it imposes draconian penalties on others. To do so would amount to condoning privileges for the religious and persecution of the non-religious (who may be just as morally idealistic) in a way that is quite contrary to what the policy of the State should be and the spirit of the Constitution of the Republic of SA in its opposition to religious discrimination. It would also be detrimental to the standing of the Church in the eyes of the world.

13. Regarding the composition of the Board to examine applicants, we accept the proposal to have a judge or former judge as chairman. However, because the Board needs to have maximum impartiality, its other members should also not be identified with the SADF or any other sectional interest. To have an officer of the SADF on the Board makes the SADF partly a judge in its own case. In addition, since the NGK has such a large white membership, one of the theologians proposed by the Naude Committee is almost certain to be of that Church. In view of the NGK's declared support of Government policy and the generally pro-SADF position of military chaplains (two thirds of whom are ministers of the NGK as it is), there is almost certain to be a pro-SADF majority in the proposed composition of the Board. The NGK, according to an answer given by Maj. Gen. van Zyl, has also declared itself unsympathetic to conscientious objectors and is only supporting the Naude proposals as a concession to other Churches.

14. The composition of the Board as proposed seems to be directed at testing an objector's belief rather than his sincerity. Theologians would be useful in determing the actual belief of the objector and its relationship to Scripture when he is a religious person, but they are not experts at assessing a person's sincerity. In fact they would tend to pass a subjective judgement as to whether the objector's theology is valid. British Tribunals in World War II had no theologians or ministers on them.

15. A better proposal for the sake of impartiality and ability would be as follows:
    a judge or former judge as chairman;
    one Professor of Theology or Senior Lecturer in Religious Studies from a university faculty that is not related to any specific Church;
    one psychologist chosen from nominations made by the Medical Council;
    one social worker from nominations made by the Social Workers' Association of South Africa;
    one advocate from nominations made by the Bar Council; and

one minister from nominations made by the objector's own denomination or, if the objector is of no religion, a Professor or Senior Lecturer in Philosophy or Ethics.

16. Regarding the hearings of the Board being in camera, we reject this completely. It is an accepted principle of democratic societies that public hearings, as distinct from secret tribunals, are an essential protection for persons being heard. There is no question of the security of the State being involved. Public hearings prevent intimidation of the person being heard and assure the public of information about how that person is treated. The lame answer given to us that this secrecy is "to protect the objector because his bona fides are a sensitive matter" makes us wonder why the SADF is suddenly so keen to protect someone on whom in other ways they are very hard. It would appear that this provision is designed to protect the SADF and stifle information about conscientious objectors.

17. Appeal against the findings of the Board, and not merely its bona fides or procedure, is also essential. Such appeal should be to the Supreme Court. The penalties proposed for refusing to accept classification make this all the more important.

18. Minors should not be required to obtain the signature of a parent or guardian on their applications. If they are old enough to be called up to fight without parental oversight, then they are old enough to take responsibility for themselves when they decide that they must object.

19. As it is not always possible to prove one's bona fides, the objector cannot be required to do more than show evidence of his (e.g. when conscription was applicable in the USA, convictions held for a lengthy period were accepted as such evidence).

20. In the account we have from the Rev. R. Briggs of the briefing on the Naude proposals given to the United Board Free Churches in September 1982 it was said concerning the bona fides of an applicant that "each man must show that his view is not new but has been held for some time." However, in our briefing on 5 January 1983 it was stated that a person in the SADF must "apply personally and in writing within 14 days of his convictions having changed" and that the Board must meet within 30 days of receiving his application. There seems to be a contradiction at this point. The requirement mentioned to the UBFC either denies the possibility of conversion shortly before call-up or it requires, as requested in the SACC proposals, the possibility of the Board deferring call-up until the person concerned is more settled or mature in his views.

21. Action "supporting or furthering the cause of an enemy of the Republic" is prosecutable under other laws in South Africa. If the State has not prosecuted,

nothing should be held against the applicant, since the purpose of the Board should be to determine his bona fides, not his political sympathies.

22. The alternative service in each case should be determined by the Board from possibilities specified by the Minister of Manpower rather than be determined by Government officials.

23. In the definition of the 3 categories of objectors which will be recognized the wording of category 3 (which allows for alternative service) limits its recognition, if we have recorded its wording correctly, to those who cannot conscientiously "render any service in any armed force", i.e. to total pacifists. The major tradition of most Christian Churches (including the Dutch Reformed Churches) on the other hand is the just war doctrine. Objectors on the basis of this doctrine will therefore not qualify for the alternative service. When asked about such objectors, however, both Brig. Knipe and Brig. Naude answered that the Board would decide whether the basis of such an applicant's objection was primarily religious or political, suggesting that those whose objection was based on the theological principle of the just war (even though it involves a political assessment) could qualify. This indicates a basic confusion in the minds of those who drafted the proposals at this point. We refer also to a report from the Rev. R. Briggs on the briefing of the United Board Free Churches on the Naude proposals in September 1982, in which he states:

> The commission recognises that objectors with genuine religious convictions would also be politically motivated, but trusts that the Board hearing the cases would be able to distinguish these men from those whose convictions have only a political, radical basis.

We ask for clarification on this point.

24. We regard the length of alternative service in one continuous period proposed for persons in category 3 as far too severe and totally unfair.

25. The outline proposals sent to us prior to the briefing indicated that this was to "compensate" for the fact that such persons would escape the danger that military service involves. Brig. Knipe plainly stated at the briefing, however, that it was "to deter people from applying in respect of categories 2 and 3". If the Board ascertains the bona fides of objectors, why is it necessary to deter them? This means that the person whom the Board finds to be genuinely bound by his religious beliefs will nevertheless be penalised by a further deterrent. We regard this as persecution of objectors.

26. Regarding the "compensation" factor, we make the following observations. Very few national servicemen are in constant danger, and most only for a short period of their service if at all. The SADF has never to our knowledge expec-

ted soldiers classified as medically unfit for combat service or non-combatants to compensate by serving a longer period. Some dangers will also be involved in alternative service, e.g. fire-fighting, and ambulance duties in operational areas. As the war intensifies so the area of conflict will extend and the danger to non-combatants and civilians will increase, as happened in Rhodesia. Those in alternative service in outlying places or on farms near the border may be more exposed than soldiers, as were conscientious objectors in Britain's "land army" during World War II and farmers in Rhodesia. Hardship may not be much different either. Charles Yeats voluntarily served in a rural area of Natal in conditions much more primitive than army barracks. The hardship of separation from wife or family is identical and would be more for conscientious objectors if their period of service is longer. We note from statistics given to the press that in 1981 only 29 national servicemen died as a result of enemy action, while 116 died in car accidents and 34 in other accidents. The 1982 deathtoll from enemy action was 77, which is still less than the accident rate.

27. Regarding the length of alternative service, the Naude Committee told the chaplains of the United Board Free Churches that twice the length of military service "corresponds to provisions operating in other countries". This is in fact not the case. The great majority of countries which conscript but allow alternative service outside the army are in Europe. Of these only France requires twice the period of service. (The law is under review in Spain where the period has been more than twice.) The average in these countries, including France and Spain, is 1½ times as long. Moreover in France the double period is only 2½ years.

28. The proposals will affect Jehovah's Witnesses and other religious denominations at present recognized under Sections 67(3), 97(3) and 126A of the Defence Act. The granting of a once-only sentence and the blue overall to these objectors, which came about in 1972, appears to have been due partly to representations made by the major Churches, including our own. Jehovah's Witnesses will now apparently find themselves in category 3 and able to do alternative service in place of detention. Their period of service will be increased almost threefold with the only advantage that they will receive some pay and leave privileges, besides not being in detention. Such a long period of alternative service appears to be a considerably more severe penalty even than the present 3 years in detention.

29. We fail to see any justification for the difference in the length of service for objectors in categories 1 and 2. Demanding 1½ times the length of service (i.e. 6 years at present) from objectors who will do much the same kind of work as objectors in category 1 is an extreme penalty.

30. In respect of objectors in category 3, "twice the length of service plus camps in one continuous period" in present circumstances amounts to 8 years. Existing legislation permits the alternative of service in the Merchant Navy, the Prisons Department, the Police or the Railway Police, provided a person serves in one of these for 13 years! Not even the Naude Committee saw that as a fair alternative because it means making it one's career. Eight years is not basically different for a young man at 18 or 21 years of age. It fundamentally affects his career choice in a way that 2 years does not. It is an extreme penalty. Even a 4 year initial period of service with camps at intervals after that is more than double the hardship. To expect the conscientious objector to do 8 years right at the beginning in one spell is also to ask for "payment in advance" on something that may otherwise not be required. He could just finish those 8 years when the war ends and conscription ceases. Meanwhile the national serviceman who started at the same time as he will have done 2 years initial service and a possible six periods of 60 days each, i.e. 1 year more than the initial 2 years for a maximum of 3 years in all.

31. When the SACC proposals were drawn up, those involved anticipated that the period of liability for service after initial training might be lengthened. That is why it was proposed that the length of alternative service, while not being less than military service, should not be more than twice the initial period.

32. For comparison consider the young man leaving school at 17. After 4 years at university or on other further education he is 21. After initial service in the SADF he is 23, but after alternative service he is 29. Or if he does his service first the soldier is 19 when he starts university or his career, and the conscientious objector is 25. We need to remember how time is experienced by a youth in his teens. At 18 the next 2 years represents one ninth of his life so far, but 8 years represents nearly half of it!

33. If a man is not convicted in court of subversion or of supporting the enemies of the country, why should he be denied political activity when others doing national service are not denied this?

34. The amount to be levied from persons liable for 12 days of Commando service per annum, which is twice the amount he would have earned during that period is excessive. The national serviceman gets paid the full amount of his normal salary during his 12 days service. Why should the objector be deprived of twice this amount?

35. The period of imprisonment for failure to pay is also ridiculously long. Why should it be any longer than the period he is required to serve in the Commando?

36. The penalty proposed for those objectors who do not fall within the 3 categories is extreme and totally unfair. Is this why it was not indicated in the

outline of the Naude proposals sent to the Churches in November 1982?

37. We want to point out (as already stated in the official letter of the Presbyterian Church dated 10 December 1982) that "the proposals made under SACC auspices:-
(a) envisage the possibility of the State ending conscription and relying on a volunteer army (see opening words of the Introduction to those proposals), and
(b) allow for the possibility that the State would accept the bona fides of non-conscriptivists and not imprison such persons (Sec.III,3).
It is our underlying belief that persons should not be conscripted for warfare nor should they be imprisoned for refusing conscription where it is applied. However, these proposals of November 1980 were framed under SACC auspices and accepted by us on the assumption that it will take time before the State adopts such views. They are not the ideal but an effort to meet the Government in its present situation."

38. The sentence of 8 years is on a par with those given for high treason (i.e. active subversion of the State in contrast to passive non-support) and exceeds many sentences given for rape and murder. In European countries where conscription applies this penalty is matched only by Czechoslovakia and Yugoslavia, which have a 10 year maximum, and Turkey, which may apply the death penalty in times of war. Bulgaria (7 years), the USSR (6 years), Poland and East Germany (5 years) all have lesser penalties, and these are maximum sentences which are not always enforced. No non-Communist country in Europe (except possibly Greece) exceeds 3 years, but then these countries also have a shorter period of military service and are not actually at war though always under the threat of it. (In Albania, Bulgaria, Czechoslovakia, Greece, Hungary, Poland, Rumania and the USSR the minimum period of service is currently 2 years or a little more. We believe that South Africa's period of service is now exceeded only by that of Israel and China.) Switzerland and Austria still have recurring sentences.

Our sources for the above information are:
(a) a survey published by the International Commission of Jurists in December 1972,
(b) a similar survey published by the International Youth and Student Movement of the United Nations in February 1978, and
(c) a very detailed study of all European countries published by the Parliamentary Assembly of the Council of Europe in August 1981.

These studies note the countries where the sentence mentioned can be recurring. This makes it appear that Brig. Naude was mistaken when he alleged at the briefing on 5 January 1983 that the penalty in Russia is recurring.

39. We have to consider the extreme character of imprisonment. Military detention

is designed as a very unpleasant alternative to complying with military commands and duties. Peter Moll recently wrote to the Cape Times describing in detail the hardships of DB compared with his experience of army life. (Appendix E) But the Military Disciplinary Code ranks imprisonment as an even heavier punishment than DB. Imprisonment also leaves a man with a criminal record, exposes him to a criminal environment and allows extremely few visits and letters. Besides this it is a waste of manpower, especially in the case of conscientious objectors, who tend to be hardworking and highly qualified persons.

40. The excessive sentence of 8 years gives the impression of being designed to force dissenters to leave the country. Whether this is so or not, we point out that it will increase the already large number of those leaving and so further deprive our country of qualified and educated manpower.

41. The SACC proposals asked that imprisonment should not be longer than twice the period of initial training (in present circumstances 4 years), if the State insists on sending such persons to prison. Even that is too severe. An alternative in some countries is a loss of civil rights; other countries actually at war (including South Africa) have interned dissenters, but this has generally been for a shorter duration and under less arduous conditions than imprisonment. In the Parliamentary debate on the Defence Amendment Act of 1978 all parties considered that 36 months in DB was a reasonable alternative to the 32 months of national service then required (Appendix F). The more extreme penalty of imprisonment should therefore not exceed the period of a man's military liability, and it should be applied not in one sentence but only as he becomes liable for particular periods of service, e.g. camps.

42. Such prescribed sentences should be only maximum sentences, to be applied at the discretion of the courts. They should also include the possibility of remission and parole, which are now allowed even for some security prisoners, e.g. Breyten Breytenbach.

43. Other less important matters in the proposals also concern us but are not included here.

The Situation Created for the Churches by the Naude Proposals

44. We have outlined above the great divergence between the provisions that our Church Assemblies have endorsed and appealed for and the Naude proposals. Particularly if category 3 of religious objectors is limited to total pacifists (in its definition), the Naude proposals are in fact considerably worse than the way objectors are being dealt with at present de facto. If the proposals are not considerably modified, we who attended the briefing will have no other option than to recommend to our Churches that they reject and oppose the extreme re-

strictions and harsh alternatives embodied in the proposed legislation which nullify its positive aspects.

45. If the proposals nevertheless become law as they presently stand, we will feel bound to recommend to our Churches that they increase their support for and assistance to conscientious objectors, including those outside the Churches who are genuine. Since we cannot expect young men to face 8 years in prison or to accept unfairly long alternative service, we will also have to recommend that the Churches examine what specific steps they need to take to assist and support conscientious objectors in the face of such legislation.

Conclusion

46. We earnestly appeal to the SADF officials concerned and to the Minister of Defence not to proceed with the proposals that have been put before us. Even if it means delay for another year, we plead for further discussion and proper consultation with the Churches on these proposals.